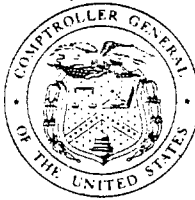


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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

10,282

FILE: B-193229

DATE: May 23, 1979

MATTER OF: Science Applications, Inc. DLG 01101

DIGEST:

Where agency, after conducting one round of negotiation with offeror, determines that offeror is no longer in competitive range, *the* agency has no duty to seek best and final offer from that offeror. Technically *the protester's proposal was* unacceptable offer, even though at lower cost than competing proposals *and was* not eligible for award.

Science Applications, Inc. (SAI) protests the award of a contract to Midwest Research Institute (MRI) under RFP NIH-ES-78-14, issued by the Public Health Service, National Institutes of Health, Department of Health, Education, and Welfare (HEW). The RFP called for a cost-type contract for studies of the process by which certain metals, their salts and organic complexes reach the environment. The contract is to last five years. *CN 602004*

AGC 00078
SAI complains that the contract was erroneously awarded to MRI at a cost of \$451,536 while it offered a proposal which was determined to be technically acceptable at a cost of \$196,556. Further, SAI argues that although the agency conducted discussions, it was not advised that negotiations were closed nor given the opportunity to submit a best and final offer. SAI also contends that the RFP contained conflicting provisions; one which stated that discussions would be held with all offerors in the competitive range and another which indicated that the Government reserved the right to make award on the basis of initial proposals without discussions.

[PROTESTER ALLEGES CONTRACT WAS AWARDED
ERRONEOUSLY]

~~005408~~

In its report submitted to this Office HEW admits that SAI was not informed of the date for closing of negotiation nor afforded the opportunity to submit a best and final offer. Because of this, and to remedy any possible ambiguities that may have been in the RFP, HEW proposes to permit the award to MRI to continue for the first year, but to have

"NIH recompute the second through fifth year effort at the earliest practical time from an administrative standpoint, and after such procurement process has been executed terminate for the convenience of the Government if award to a firm other than Midwest Research, Inc. under the competitive procurement would be more advantageous to the Government, all factors considered."

HEW does not believe it was practical to terminate the first year effort because several months of performance on that first year project have already been completed.

SAI does not believe that HEW's proposed remedy is appropriate. It insists that it should have been awarded the contract as the lowest priced acceptable offeror and argues that the present contract should be terminated and awarded to it under its alternate proposal which provides for accomplishing the work for the first year in six months and completing the rest as originally scheduled.

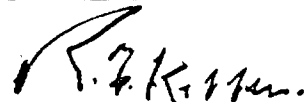
We find no basis, however, for viewing HEW's treatment of SAI as improper. SAI's position appears to be based on a letter it received from HEW on August 4, 1978, announcing that SAI had been determined to be within the competitive range and requesting the answers to two technical questions. That letter stated that the SAI proposal was considered "acceptable." The use of that language was unfortunate, however, as the record reveals that at the time the competitive range was established the evaluators considered SAI's proposal

to be only "marginally acceptable." Moreover, after one round of written discussions with SAI, SAI was determined to be unacceptable and it was dropped from the competitive range. Negotiations leading to award were then conducted with MRI.

We have often held that a determination that a proposal is in the competitive range for discussion does not necessarily mean the proposal is acceptable as initially submitted but may indicate only that there is a real possibility it can be improved without major revisions to the point it becomes acceptable. Proprietary Computer Systems, Inc., B-191731, September 20, 1978, 78-2 CPD 212. Despite the language in the HEW letter it is clear from the evaluation record that SAI's proposal was never more than "marginally acceptable" and was finally considered to be technically unacceptable. Consequently, SAI's contention that its proposal was judged by HEW to be technically acceptable is not supported by the record of the evaluation, and since SAI was no longer in the competitive range, HEW had no duty to conduct further negotiation (including requesting a best and final offer) with it. SAI's argument regarding its lower cost is irrelevant, since a technically unacceptable offer is not eligible for award. Industrial Writing Institute, Inc., B-193245, May 10, 1979, 79-1 CPD ____.

With respect to the allegedly conflicting RFP provisions, we point out that it is standard practice for solicitations to reserve to the Government the right to make award without discussions, even though it is more likely that discussions will be held with these offerors in the competitive range. See, e.g., Federal Procurement Regulations 1-3.805-1(a) (1964 ed. amend. 153). We see no conflict in the terms of this RFP.

In view of the circumstances, we see no merit to the protest, which is hereby denied.


Deputy Comptroller General
of the United States